

FILED

10:36 O'Clock a M

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

MAY 5 2010

JEANNE HICKS, Clerk
BY Rita Storms
Deputy

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Diane Troxell, Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: May 5, 2010

TITLE:

COUNSEL:

STATE OF ARIZONA

Sheila Sullivan Polk
Yavapai County Attorney
Bill Hughes, Esq.
Steven Sisneros, Esq.
Deputy Yavapai County Attorneys

(Plaintiff)

(For Plaintiff)

vs.

JAMES ARTHUR RAY

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(Defendant)

(For Defendant)

RULING ON MOTION TO QUASH SUBPOENAS DUCES TECUM

The Court has considered the State's Motion, the Defendant's Opposition and Declarations submitted in response, and the Reply. The parties have waived oral argument.

The Court concludes that the principles discussed in *Carpenter v. Superior Court*, 176 Ariz. 486, 862 P.2d 246 (App.1993) determine the issue presented in this motion. This conclusion is made despite a factual distinction relating to the entities named in the subpoenas duces tecum. The subpoena duces tecum at issue in *Carpenter* was directed to a law enforcement agency, an entity which under the holding in that case and the 2003 amendment to Rule 15.1(f) of the Arizona Rules of Criminal Procedure is deemed to be under the direction or control of the prosecutor for purposes of the State's disclosure obligations. The subpoenas in the present case are directed to entities that may not be included in the categories of persons and entities listed in Rule 15.1(f)(1)-(3) as being under the prosecutor's direction or control. Because the court in *Carpenter* considered the

possibility that the information sought was not subject to mandatory disclosure under Rule 15.1, however, the holding and the general discussion of the rules governing disclosure in a criminal matter apply to the case under consideration.

The Arizona Court of Appeals in *Carpenter* concluded that "even if the information [the] defendant sought is not encompassed within the mandatory disclosure provisions of Rule 15, the rules provide an adequate means of obtaining needed information." Specifically, "[i]f a defendant's requested information is not otherwise obtainable under Rule 15.1, Rules 15.1.e [(now Rule 15.1(g))] and 16.1b permit disclosure pursuant to motion and court order." *Id.*, 176 Ariz. at 490-91, 862 P.2d at 250-51. Thus, the procedures defined in the specific Rules of Criminal Procedure relating to disclosure and discovery – not the use of subpoenas duces tecum issued without notice to other parties and interested persons – is the appropriate means of obtaining information from third parties if the authority of the Court is being invoked.

As noted in the *Carpenter* opinion, "Rule 15 is a comprehensive system of criminal discovery procedures promulgated to provide defendants with adequate means to discover material evidence and to provide notification to each side of the other's case-in-chief so as to avoid unnecessary delay and surprise at trial." *Id.*, 176 Ariz. at 488, 862 P.2d at 248 (citations omitted). Although there are statutory exceptions, which are noted in the State's reply, the rules governing disclosure by order of the court apply both to the defense and the State. Rules 15.1(g) and 15.2(g). These rules require notice to the opposing party through the basic motion and order procedure.

Some of the subpoenas at issue in this matter implicate victims' rights concerns. In order for the prosecution to be able to fulfill its obligations to assist alleged victims in asserting those rights, including rights relating to discovery requests, adequate notice must be provided to the State. See Rules 39(b)(11) and 39(c). Furthermore, when medical or other records of non-victims are requested either directly from those persons or from other entities such as hospitals, affected persons should, and in many instances must, be provided an opportunity to raise any valid objection to disclosure. Specifically with regard to hospital and medical records, persons have rights and privileges that limit and regulate the release of such records. The Health Insurance Portability and Accountability Act ("HIPAA"), A.R.S. § 12-2281 et seq. (Health Care Institution Records), and A.R.S. § 12-2291 et seq. (Medical Records) could apply in this context. An affected individual or a representative of a health care institution receiving a subpoena duces tecum, a document ostensibly carrying the full authority of a court order, may feel compelled to comply even though the subpoena does not satisfy federal or state requirements. Compliance with Rule 15.1(g) would help to ensure appropriate consideration of the rights of persons actually affected by the disclosure of medical and other records.

Concluding that Rule 15.1(g) controls the procedure for discovery of the records that relate to this motion does not limit independent investigation. Although ERs 4.1- 4.4 of the Rules of Professional Conduct must be observed of course, "[t]he Arizona Rules of Criminal Procedure do not limit the right of a criminal defendant to conduct an independent pretrial investigation." *State v. Carpenter*, 176 Ariz. at 491, 862 P.2d at 251. However, as stated in *Carpenter*,

[t]he defendant triggers the criminal discovery process encompassed in Rule

15 . . . when he attempts to use the court's subpoena power to order production of materials or information. Once the defendant elects to utilize the court's authority to obtain records, he must do so according to the rules adopted by the Arizona Supreme Court.

Id. As the Defendant in the present matter intended to utilize the Court's authority to obtain information, the appropriate discovery procedure is the one prescribed by Rule 15.1.

For the reasons set forth above,

IT IS ORDERED *granting* the State's Motion to Quash Subpoenas Duces Tecum.

DATED this 5th day of May, 2010.


Warren R. Darrow
Superior Court Judge

cc: Victim Services Division